

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

HECTOR BRISENO-MEDINA,

Defendant.

NO. 2:13-CR-0139-TOR-1

ORDER DENYING DEFENDANT'S  
MOTION TO REDUCE SENTENCE

BEFORE THE COURT is Defendant's Request for Compassionate Release/Reduction in Sentence pursuant to 18 U.S.C. § 3582(c)(1)(A).<sup>1</sup> ECF Nos. 83, 86. This matter was submitted for consideration without oral argument. The

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<sup>1</sup> For lack of jurisdiction, the Court will not address Defendant's civil claims for injunctive and declaratory relief. Nor will the Court address the relief requested pursuant to the CARES Act, ECF No. 83 at 2, as this Court is not the proper venue. *See* Pub. L. No. 116-136 § 12003(b)(2), 134 Stat. 281, 516 (to be codified at 18 U.S.C. § 3621).

1 Court has reviewed the record and files herein, the completed briefing, and is fully  
2 informed. For the reasons discussed below, Defendant's request for sentence  
3 reduction is denied.

#### 4 **BACKGROUND**

5 On January 6, 2014, Hector Briseno-Medina appeared before the Court and  
6 entered a plea of guilty to the Indictment filed on September 4, 2013, charging him  
7 with one count of Possession with Intent to Distribute Methamphetamine, in  
8 violation of 21 U.S.C. § 841; and one count of Possession with Intent to Distribute  
9 Heroin, in violation of 21 U.S.C. § 841. ECF Nos. 13, 35. On February 12, 2015,  
10 this Court sentenced Defendant to a 210-month term of imprisonment, followed by  
11 a 5-year term of supervised release. ECF No. 69. Defendant's projected release  
12 date is August 31, 2028. ECF No. 85 at 3.

13 On May 5, 2020, Defendant requested a sentence reduction from the Warden  
14 (Facility Administrator) of Correctional Institution (CI) Reeves I/II. ECF No. 85-  
15 1. The request was denied on May 13, 2020. *Id.* The Government concedes  
16 Defendant has exhausted his administrative remedies. ECF No. 85 at 7. On  
17 October 5, 2020, Defendant filed the instant request seeking his early release. ECF  
18 No. 83.

19 Defendant alleges three theories to support his motion for a sentence  
20 reduction: (1) his 210-month sentence is inconsistent with modern drug sentencing

1 fairness; (2) his age and medical conditions put him at greater risk of severe illness  
2 from COVID-19; and (3) his efforts at self-improvement have led to rehabilitation.  
3 ECF Nos. 83 at 17-28, 86 at 2-3.

4 The Government opposes release because Defendant has failed to establish  
5 any “extraordinary and compelling reasons” to support the requested relief, and the  
6 factors under 18 U.S.C. § 3553(a) weigh against early release. ECF No. 85 at 6.

## 7 DISCUSSION

### 8 A. Eligibility for Compassionate Release

9 Federal courts have the statutory authority to modify an imposed term of  
10 imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1)  
11 or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2).  
12 Until recently, motions for compassionate release could only be brought to the  
13 Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002).  
14 However, after the December 2018 passage of the First Step Act, defendants may  
15 now bring their own motions for compassionate release after exhausting  
16 administrative remedies within the Bureau of Prisons or by waiting 30 days after  
17 receipt of their request by the warden of defendant’s facility, whichever is earlier.  
18 18 U.S.C. § 3582(c)(1)(A) (2018).

19 A defendant may be eligible for compassionate release: (1) if the Court finds  
20 “extraordinary or compelling reasons” to warrant a sentence reduction; or (2) if the

1 defendant is at least 70 years old, has served at least 30 years in prison pursuant to  
2 a sentence imposed for the offense for which the defendant is currently imprisoned,  
3 and the defendant is determined not to pose a risk of danger to the community. 18  
4 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find  
5 that a sentence reduction is “consistent with applicable policy statements issued by  
6 the [United States] Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The  
7 Sentencing Guidelines instruct that the Court should consider the sentencing  
8 factors set forth in 18 U.S.C. § 3553 when deciding a motion for compassionate  
9 release, and that the Court should not grant a sentence reduction if the defendant  
10 poses a risk of danger to the community, as defined in the Bail Reform Act.  
11 U.S.S.G. § 1B1.13.

#### 12 **B. Exhaustion or Lapse of 30 days**

13 The Facility Administrator denied Defendant’s request for compassionate  
14 release on May 13, 2020. ECF No. 85-1. The Government concedes Defendant  
15 has exhausted his administrative remedies. ECF No. 85 at 7. Accordingly, the  
16 Court finds Defendant has exhausted his administrative remedies.

#### 17 **C. Extraordinary and Compelling Reasons**

18 Defendant first argues his 210-month sentence is inconsistent with modern  
19 drug sentencing fairness, and that such inconsistencies warrant “extraordinary and  
20 compelling reasons.” ECF No. 83 at 17. Defendant also argues his medical

1 conditions present extraordinary and compelling reasons to justify early release.

2 *Id.* at 21. Finally, Defendant cites to his self-improvement and rehabilitation  
3 efforts to support his arguments. ECF Nos. 83 at 20, 86 at 2-3. None of these  
4 assertions present the type of extraordinary and compelling reasons that justify  
5 early release under the First Step Act.

6 The First Step Act did not define what “extraordinary and compelling  
7 reasons” warrant a sentence reduction, but the compassionate release statute directs  
8 the Court to consider the Sentencing Commission’s policy statements when  
9 deciding compassionate release motions. 18 U.S.C. § 3582(c)(1)(A). The  
10 Sentencing Commission’s policy statement on sentence reduction mirrors the  
11 language of the compassionate release statute, but it has not yet been updated to  
12 reflect the procedural changes implemented by the First Step Act. U.S.S.G. §  
13 1B1.13. “While that particular policy statement has not yet been updated to reflect  
14 that defendants (and not just the [Bureau of Prisons (“BOP”)]) may move for  
15 compassionate release, courts have universally turned to U.S.S.G. § 1B1.13 to  
16 provide guidance on the ‘extraordinary and compelling reasons’ that may warrant a  
17 sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-LJM-CMM,  
18 2019 WL 2059488, at \*2 (S.D. Ind. May 9, 2019) (gathering cases).

19 The sentence reduction policy statement outlines four categories of  
20 circumstances that may constitute “extraordinary and compelling reasons” for a

1 sentence reduction: (1) the defendant suffers from a medical condition that is  
2 terminal or substantially diminishes the defendant's ability to provide self-care in a  
3 correctional environment; (2) the defendant is at least 65 years old, is experiencing  
4 a serious deterioration in health due to the aging process, and has served at least 10  
5 years or 75% of his or her term of imprisonment; (3) family circumstances  
6 involving the death or incapacitation of the caregiver of the defendant's minor  
7 child or the incapacitation of the defendant's spouse or registered partner; or (4)  
8 other reasons, other than or in combination with the other listed circumstances, that  
9 are extraordinary and compelling. U.S.S.G. § 1B1.13, Application Note 1.

10 First, it is unclear upon which authority Defendant relies for his assertion  
11 that his sentence is "inconsistent with modern standards of fairness in drug  
12 sentencing." ECF No. 83 at 17. Regardless, Defendant's sentence was properly  
13 calculated by applying the relevant advisory guidelines to Defendant's offenses.  
14 *See* ECF No. 57. Defendant's 210-month sentence does not create an  
15 extraordinary and compelling reason for a sentence reduction.

16 Defendant next argues at age 38, he is "among those at high-risk for severe  
17 illness from COVID-19" due to his hypertension medical condition. ECF No. 83  
18 at 21. Defendant does not provide any evidence to support his alleged medical  
19 condition. Conversely, the Government provided Defendant's Bureau of Prison  
20 health screens from 2019. ECF No. 85-2. Hypertension was specifically denied in

1 each screening and no other medical conditions were listed that would put  
2 Defendant at greater risk for severe illness. *Id.* Additionally, while Defendant  
3 provides some general data for COVID-19 cases in federal correctional facilities  
4 (ECF No. 83 at 5-6), Defendant has not alleged any conditions at CI Reeves I/II  
5 that would put him at greater risk of contracting COVID-19 or that would prevent  
6 him from receiving proper care if he did contract COVID-19.

7 Finally, while Defendant's efforts to improve himself through educational  
8 and social programming are commendable, they are not sufficient grounds to  
9 warrant a sentence reduction. Defendant has not presented any evidence of  
10 extraordinary and compelling reasons that would compel this Court to grant early  
11 release.

12 **D. Factors under 18 U.S.C. § 3553(a)**

13 18 U.S.C. § 3582(c) and the Sentencing Guidelines instruct that the Court  
14 should consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when  
15 deciding a motion for compassionate release. 18 U.S.C. § 3553(a) provides:

16 The court shall impose a sentence sufficient, but not greater than necessary, to  
17 comply with the purposes set forth in paragraph (2) of this subsection. The  
18 court, in determining the particular sentence to be imposed, shall consider—

18 (1) the nature and circumstances of the offense and the history and  
19 characteristics of the defendant;

20 (2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for  
the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

- 1 (D) to provide the defendant with needed educational or vocational  
2 training, medical care, or other correctional treatment in the most  
3 effective manner;
- 4 (3) the kinds of sentences available;
- 5 (4) the kinds of sentence and the sentencing range established for—  
6 (A) the applicable category of offense committed by the applicable  
7 category of defendant as set forth in the guidelines—  
8 (i) issued by the Sentencing Commission pursuant to section  
9 994(a)(1) of title 28, United States Code, subject to any  
10 amendments made to such guidelines by act of Congress  
11 (regardless of whether such amendments have yet to be  
12 incorporated by the Sentencing Commission into amendments  
13 issued under section 994(p) of title 28); and  
14 (ii) that, except as provided in section 3742(g), are in effect on  
15 the date the defendant is sentenced; or  
16 (B) in the case of a violation of probation or supervised release, the  
17 applicable guidelines or policy statements issued by the Sentencing  
18 Commission pursuant to section 994(a)(3) of title 28, United States  
19 Code, taking into account any amendments made to such guidelines or  
20 policy statements by act of Congress (regardless of whether such  
amendments have yet to be incorporated by the Sentencing  
Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—  
  - (A) issued by the Sentencing Commission pursuant to section  
994(a)(2) of title 28, United States Code, subject to any amendments  
made to such policy statement by act of Congress (regardless of  
whether such amendments have yet to be incorporated by the  
Sentencing Commission into amendments issued under section 994(p)  
of title 28); and
  - (B) that, except as provided in section 3742(g), is in effect on the  
date the defendant is sentenced.
- (6) the need to avoid unwarranted sentence disparities among defendants  
with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

At the time of the original sentencing, the Court fully considered these  
factors. Once again, the Court has fully considered these factors in light of the  
developments since sentencing. Of particular note is the severity of the offenses in



1 this case. The underlying criminal conduct involved possession of substantial  
2 quantities of methamphetamine, heroin, and cocaine, as well as possession of  
3 multiple firearms. These are serious crimes that present a grave risk of harm to the  
4 community. The Court is obligated to protect the public from defendant's  
5 dangerous conduct. Additionally, of concern to the Court is Defendant's  
6 significant and lengthy prior criminal history. At the time of sentencing,  
7 Defendant, aged 32, had already attained a Criminal History Category V for prior  
8 crimes involving violence, multiple deportations, and prior drug manufacturing.  
9 ECF No. 57 at 12-16.

10 The sentence the Court imposed was "sufficient, but not greater than  
11 necessary," to comply with the purposes of § 3553(a), including to reflect the  
12 seriousness of the offense, to promote respect for the law, to provide just  
13 punishment for the offense and to afford adequate deterrence to this criminal  
14 conduct. Even with recent COVID-19 developments, the sentence imposed  
15 remains sufficient but not greater than necessary to comply with the purposes of  
16 sentencing.

### 17 **E. Equal Protection and Eighth Amendment Rights**

18 Defendant's allegations that his Equal Protection rights and Eighth  
19 Amendment rights have been violated are without merit. ECF No. 83 at 3, at 26.  
20 First, Defendant was not denied compassionate release by the Warden because of

1 Defendant's nationality, but because he does not meet three of the seven  
2 requirements for consideration. ECF No. 85-1. In any event, the Warden's  
3 decision is not the final decision, it is a decision for the Court. Here, Defendant  
4 does not present any "extraordinary and compelling reasons" for a reduced  
5 sentence.

6 Defendant's Eighth Amendment claim cannot stand because there are  
7 currently no positive cases of COVID-19 among inmates at CI Reeves I/II. *See*  
8 Federal Bureau of Prisons, Coronavirus COVID-19 Cases (November 13, 2020),  
9 <https://www.bop.gov/coronavirus> (follow "privately-managed prisons" hyperlink).  
10 The 12 inmates that did contract COVID-19 successfully recovered. Additionally,  
11 CI Reeves I/II has implemented policies and procedures to mitigate the risks of  
12 COVID-19. ECF No. 85-3. Consequently, Defendant fails to demonstrate  
13 conditions of confinement that would violate his Eighth Amendment rights.

#### 14 **CONCLUSION**

15 Defendant has not presented any evidence of extraordinary or compelling  
16 reasons to modify the sentence that has been imposed. The Court declines to  
17 exercise its discretion to reduce Defendant's sentence because extraordinary and  
18 compelling reasons do not warrant such a reduction.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Defendant's Request for Compassionate Release/Sentence Reduction

3 Pursuant to 18 U.S.C. § 3582(c)(1)(A), ECF Nos. 83, 86, is **DENIED**.

4 The District Court Executive is directed to enter this Order and furnish  
5 copies to the parties.

6 **DATED** November 18, 2020.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge